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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,457	08/03/2001	Robert H. Schultz	CBC 2001-10	7028
7590	01/07/2004		EXAMINER	
Michael A. Goodwin, Esq. Klaas, Law, O'Meara & Malkin, P.C. 1999 Broadway, Suite 2225 Denver, CO 80202			PERRIN, JOSEPH L	
			ART UNIT	PAPER NUMBER
			1746	

DATE MAILED: 01/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/921,457	SCHULTZ ET AL.
	Examiner	Art Unit
	Joseph L. Perrin, Ph.D.	1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 04 November 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-10 and 19-25 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-6,8,9,19-23 and 25 is/are rejected.
 7) Claim(s) 7,10 and 24 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) The translation of the foreign language provisional application has been received.
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-10 & 19-25 in Paper No. 20031104 is acknowledged.

Response to Arguments

2. In view of applicant's amendment filed 04 November 2003 the status of the application is as follows:

Title Objection

The proposed title correction has been approved by the Examiner.

Claims Objections

The objection of claims 7, 10 and 24 has been maintained for reasons of record. In response to Applicant's amendment of the preamble from an "apparatus" to a "system", this language does not provide any further structural limitation to the claimed apparatus. Applicant has relied on future intended uses to distinguish the presently invention from the prior art of record. It is noted, that future intended uses, to the extent that they do not impart structure, are given little patentable weight. The preamble recitation of "system" is does not accord weight to an otherwise disclosed future intended use, as a

"system" has been held to be an "apparatus." See e.g. *In re Walter*, 618 F.2d 758, 762 n.2, 205 USPQ 397, 402 n.2 (CCPA 1980).

Rejections under 35 U.S.C. §112, first paragraph

The rejection of claims 8 and 25 has been withdrawn in view of applicant's amendment.

35 U.S.C. §102 Rejections

Applicant's arguments in view of the amendment, filed 04 November 2003, with respect to the rejection(s) of claim(s) 1-6, 8-9, 19-23 and 25 under 35 U.S.C. §102 have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration in view of the new amendment to the claims, a new ground(s) of rejection is made (see below).

Claim Objections

3. Claims 7, 10 and 24 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Re claims 7 and 24, the claims are directed to the article to be cleaned and, therefore, fails to provide any further structural limitation to the claimed apparatus. Re claim 10, the claim is directed to the location of the object to be washed and, therefore, fails to provide any further structural limitation to the claimed apparatus. The type or location of the object

to be washed is considered a future intended use of the claimed apparatus, which is given little patentable weight. Accordingly, these claims have not been further treated on the merits.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6, 9 and 19-23 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,875,800 to Hulskotte.

Re claims 1-2, 9 & 19-20, Hulskotte discloses a washing apparatus with a washer having a housing 41, a rotatable member 42, and a stationary rail with arcuate profile (not numbered, see Figure 7 inside structure 44). See, for instance, Figures 4 & 7, and associated text).

Re claims 3-4 & 21, Hulskotte further discloses the rotatable member having a plurality of detents 46 at the outer periphery (see, for instance, Figure 4), and a housing having a cover (e.g. top of structure 44, or in another embodiment, cover 28 in Figure 1) and tank (e.g. drain 52 in Figure 5, which inherently must drain to some type of storage tank, or in another embodiment, tank 37 in Figure 1).

Re claims 5-6 & 22-23, Hulskotte further discloses the housing having a nozzle 57 which sprays perpendicular to the axis of rotation of the rotatable member (see, Figure 8 & col. 6, line 31 *et seq.*).

It is noted that Applicant's limitations in claims 1 & 19 directed to the object to be washed (and the "wherein..." limitations associated therewith) are given little patentable weight and are considered intended use of the apparatus. MPEP 2115 and caselaw is replete with teachings disclosing that expressions relating an apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims." *In re Young*, 75 F.2d 966, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 8 & 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hulskotte in view of US 3,942,545 to Flynn.

Recitation of Hulskotte is repeated here from above. Although Hulskotte discloses structure 44 covering the articles to be washed, Hulskotte does not expressly disclose using curtains.

Flynn teaches that it is known to provide a rotary washing apparatus with spray curtains to contain wash spray (see, for instance, col. 3-4, bridging paragraph). Therefore, the position is taken that a person of ordinary skill in the art at the time the invention was made would have been motivated to modify the rotary washing apparatus of Hulskotte with spray curtains, as disclosed by Flynn,

in order to provide a rotary spray washing apparatus with containment means for wash fluid. It is noted that the since the spray curtain of Flynn opens upon passing of object to be washed, the spray curtain of Flynn reads on applicant's claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 3,656,491 to Ballard, which discloses a rotary cleaning turntable with rail guides.

US 3,226,757 to Shea, which discloses a rotary bottle washing apparatus with arcuate rail guide.

US 2,668,550 to Burge, which discloses a can washing apparatus with rail guides.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 7:30-5:00, except alternate Fridays.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571)272-1302. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9310.

15. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

Joseph L. Perrin, Ph.D.
Examiner
Art Unit 1746

jlp

Frankie L. Stinson
FRANKIE L. STINSON
PRIMARY EXAMINER
GROUP 3400-1700